

Supreme Court, U.S.
FILED

DEC 16 1983

ALEXANDER L. STEVAS
CLERK

CASE NO. 83-512

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983.

MILTON SUTTON, et al.,

Petitioners,

vs.

PHILIP R. BLOOM,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

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621-1742

QUESTION PRESENTED

Whether in an action brought by the petitioners under Section 1981 and 1982 of Title 42 of the United States Code alleging housing discrimination in Ohio, the Court of Appeals properly applied the most analogous Ohio Statute of limitations, Section 4112.05 (A) of the Ohio Revised Code.

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OPINIONS BELOW

The United States District Court did not issue a published opinion. The Opinion and Memorandum of the United States District Court is attached to the petition for writ of certiorari.

The United States Court of Appeals did issue a published opinion which is reported at 710 F. 2d 1188 (6th Cir. 1983).

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit was entered on June 27, 1983. Jurisdiction is alleged to be conferred pursuant to Section 1254 (1) of Title 28 of the United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED

Petitioners claim that various provisions of the United States Constitution and the Constitution of the State of Ohio are involved along with various statutory provisions contained in the United States Code and the Ohio Revised Code. Those provisions are reprinted in the Petition for Writ of Certiorari at pages 2 to 11.

STATEMENT OF THE CASE

Plaintiff instituted this action by filing a complaint in the United States District Court on July 30, 1976. The complaint set forth several causes of action including a pendent claim under state law for malicious prosecution.

In the original complaint the plaintiffs named eight defendants.

Thereafter an amended complaint was filed adding two additional defendants. During the course of the proceedings some of the defendants entered into separate settlements with the plaintiffs concerning their claims and other defendants were dismissed.

On January 4, 1978 the court granted motions for summary judgment dismissing the defendants, David Solether and Paul Mancino, Jr. as parties in this case.

The cases then proceeded eventually coming on for trial on March 15, 1978. The matter came on for trial against the defendants Philip Bloom and Mary Louis Bloom and also Lee Peters and Mrs. Lee Peters.

The matter progressed through trial commencing March 15, 1978. On March 29, 1978 the jury returned averdict for the defendants, Lee Peters and Mary Louise Bloom. The jury returned a verdict in favor of the plaintiffs and against the defendant, Philip Bloom only.

Thereafter, on April 12, 1978, the court entered a judgment upon the verdict of the jury, dismissing the action as to Mary Louise Bloom and Lee Peters and granting judgment to the plaintiff, Milton R. Sutton, against the defendant and the sum of \$33,101.34 for compensatory damages in the sum of \$30,000.00 in punitive damages.

The defendant, Philip Bloorm, then filed a motion to set aside the judgment or for a new trial together with a motion for reduction of judgment

or for a remittitur.

Thereafter a motion for attorney fees was filed and a supplemental motion for reconsideration was filed by the defendant concerning the issue of the statute of limitations in lieu of a certain decision by the United States Court of Appeals for the Sixth Circuit in Warner v. Perrino, 585 F. 2d 171 (6th Cir. 1978).

On April 12, 1979 the court overruled the motion for a judgment notwithstanding the verdict or for a new trial. The motion of the defendant for remittitur was denied together with the motion of Mary Louise Bloom for attorney fees.

The motion of the defendants for leave to proceed in forma pauperis was also denied by the court. An appeal from that decision was taken together with a request to proceed in forma pauperis before the United States Court of Appeals for the Sixth Circuit.

This court granted the request to proceed in forma pauperis in an order filed January 21, 1980. Thereafter the United States District Court granted a transcript of the proceedings and this matter is now before this court for review.

The facts which lead up to the controversy in question were summarized by the court in its instructions to the jury. The District Court, in instructing the jury summarized those facts which were at least undisputed.

"First let me review some material facts that re undisputed. Wenhaven Drive, Russell Township, Ohio, runs north off of Music Street which runs generally east and west to the east of Chagrin Falls, Ohio. Chagrin Falls is in Cuyahoga County While Russell Township is in Geauga County.

"A drawing and an aerial photograph of the street, received in evidence, show the layout of the Drive and the locations of and addresses of the homes of persons mentioned in the testimony.

"The house at 15459 near the north end of Wenhaven Drive, owned by Martin K. Hawthorne and Sally J. Hawthorne, was the subject of a mortgage foreclosure action brought by Central National Bank, the mortgagee, in the Geauga County Common Pleas Court. A foreclosure decree was entered December 11, 1972. Beginning January 3, 1973, newspaper notices advertised that the house would be sold at Sheriff's Sale on or about February 8, 1973.

"Also in January, the Hawthorne's listed their property for sale with the White Realty Company, Landerwood Office and Solether Realty Company of Chagrin Falls; and at least one for sale sign was placed on the property.

"After an exchange of offers and counter offers, Milton C. Sutton on January 18, 1973, offered to purchase the Hawthorne property for \$42,000; and the Hawthornes accepted the offer on January 24, 1973.

"The offer of Mr. Sutton was conditioned first on the purchaser selling his home located on Glencairn Road, Shaker Heights, Ohio, within seventeen days after date of the Hawthorne's acceptance; and secondly the offer was conditioned on all plumbing being in good working order and free of leaks at time of transfer of deed.

"The Hawthornes, the sellers, had the right to continue to show the house for sale to secondary buyers but if a secondary offer was received, purchase Sutton had 72 hours after written notice to either remove his conditions or declare the offer null and void. The real estate purchase agreement also provided that it shall be null and void and of no further effect if said residence is placed on Sheriff Sale, Geauga County Court House.

"On January 27, 1973, Mr. Philip Bloom called Solether Realty and asked to immediately see a salesman. Mr. Barriball appeared at the Bloom home. Mr. Bloom informed Mr. Barriball that he wished to purchase the Wenhaven property. Mr. Bloom was told that there was a pending offer and therefore any offer by Bloom could only be a secondary offer. (However, Mr. Barriball, at Mr. Bloom's request showed the property to Mr. Bloom.) On the same day a

secondary offer was prepared with certain contingencies, one of which was that the offer was contingent upon the Hawthornes being released from the original purchase agreement with Mr. Sutton. The Hawthornes accepted the Bloom's offer subject to the existing contract with Mr. Sutton.

"On or about February 1, 1973, after being notified by Solether Realty of the secondary offer, Sutton withdrew the two conditions of their agreement with the Hawthornes.

" Mr. Bloom was notified by Solether Realty Company that the primary offeror had removed the conditions from his offer of purchase and therefore that Bloom's secondary offer was not accepted by the Hawthornes. It will be for the jury to determine from all the evidence whether or not Mr. Bloom knew that the primary offer accepted by the Hawthornes was made by a black American.

"Within a few days of the Sheriff's sale, the evidence tends to indicate that Mr. Bloom had some conversations with some of his neighbors concerning the Hawthorne property and that he had an evening meeting concerning the subject at the Bloom house, which meeting was attended by Mr. Bloom, Mr. Brosnan, Mr. McLaughlin, and Mr. Peters.

"What the conversation was at this meeting is in dispute and it will be for the jury to determine, if it can, what was discussed at this meeting and which of the four persons in attendance had knowledge of any matter that was discussed.

"In any event, the evidence tends to indicate that some time after this meeting, Mr. Brosnan, Mr. McLaughlin, and Mr. Peters each provided Mr. Bloom with \$1,000. When these monies were paid and what the purpose, understanding and terms under which each payment was made, will be for the jury to determine from all the evidence. However, it is undisputed that the \$3,000 received from the three men plus \$1,000 of Mr. Bloom's money was used

in meeting the \$4,000 required to be paid by Bloom to satisfy 10 percent of the \$40,000 price which he successfully bid on the Hawthorne property at the Sheriff's Sale.

"The Sheriff's Sale was conducted on February 8 at the Geauga County Court House. Several persons bid on the property including Mr. Brosnan, Mr. Bloom, and Mr. Sutton. The top bidder at the sale was Mr. Philip Bloom who bid \$40,000. He out-bid Mr. Sutton whose last bid was \$39,900." (Tr. 1540-45)

The jury then found that there was no conspiracy involved. However, the jury found that individual liability against the defendant, Philip Bloom, and awarded compensatory damages in the sum of \$33,101.34 and punitive damages in the sum of \$30,000.00. All other defendants were dismissed upon exoneration by the jury.

Upon review of the United States Court of Appeals for the Sixth Circuit, the judgment of the District Court was reversed. The United States Court of Appeals ruled that the action was barred by the applicable Ohio statute of limitations, Section 4112.05 (A) of the Ohio Revised Code. The decision was announced on June 27, 1983. Petitioners did not file a petition for rehearing but instead filed the present petition for writ of certiorari to review that judgment.

THERE ARE NO SUBSTANTIAL FEDERAL QUESTIONS PRESENTED

Petitioners claim that there are substantial federal questions presented. However, there are none presented in this case.

This case only presents an issue involving the application of the Ohio statute of limitations to action commenced in the State of Ohio. It certainly has no national effect and certainly does not merit review by the United States Supreme Court.

Rule 17.1 (a) of the Rules of the United States Supreme Court provide as follows:

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

This action is not in conflict with any decision rendered by any other Court of Appeals. Petitioner's attempt to transform a relatively straightforward decision into one of national implication. None such exists in this case. Therefore the petition for writ of certiorari should be denied.

ARGUMENT

I

IN AN ACTION BROUGHT IN THE STATE OF OHIO ALLEGING A HOUSING DISCRIMINATION CASE IN THE STATE OF OHIO UNDER SECTIONS 1981 and 1982 OF TITLE 42 OF THE UNITED STATES CODE THE PROPER STATUTE OF LIMITATIONS TO BE APPLIED IS THE MOST ANALOGOUS STATUTE OF LIMITATIONS EXISTING UNDER OHIO LAW.

In this case, the important ties to the action are the State of Ohio. Consequently, and in accordance with prior Supreme Court precedence, the Court of Appeals applied the most analogous state statute of limitations. 180 day statute of limitation was found in Section 4112.05 (A) of the Ohio Revised Code. This is in accordance with prior Ohio Supreme Court decisions governing the same subject. See Runyon v. McCrary, 427 U.S. 160, 180, (1976); Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975).

The allegations of the petitioner that this is a retro-active application of the applicable statute of limitations is totally without merit. The statute which governs this action was enacted by the Ohio General Assembly in 1969. The present action was not filed until 1976. Therefore any claim that the statute was applied retroactively is totally without merit.

The Court of Appeals in this case properly followed its prior decision in Warner v. Perrino, 585 F. 2d 171 (6th Cir. 1978) which involved an almost identical claim. Petitioner, like the District Court, opt to apply the decision in Mason v. Owens-Illinois, Inc., 517 F. 2d 520 (6th Cir. 1975). However, the decision in Mason is inapposite.

That case involved a claim for employment discrimination commenced by the plaintiff on November 3, 1972. The complaint alleged that for a period of 16 years he had been employed by Owens-Illinois, Inc. until his discharge in August, 1970; that the defendant in that case had unlawfully

discriminated against him because of his race and refused to promote him and other simulated claims of discrimination.

The United States Court of Appeals in determining the applicable statute of limitations found that Section 2305.07 of the Ohio Revised Code was applicable to this situation.

However, a close reading of that decision revealed that the language of Section 2305.07 of the Ohio Revised Code was found to be applicable because the Ohio Civil Rights Statute merely "set[s] up an administrative as contrasted to a judicial procedure. . . ." 517 F. 2d at 512.

However, the provisions of Section 4112.02 (H) (1) of the Ohio Revised Code provide for the commencement of an action in court. It does not provide for the filing of an administrative proceeding. Therefore, unlike the statute and facts involved in the Mason case, the Ohio Civil Rights Act does specifically provide for a court action which is to be commenced within 180 days after the unlawful after the unlawful housing discrimination. It does not provide for an administrative remedy such as involved in the Mason case. Accordingly, the reliance upon the decision in Mason is misplaced and the court should have applied this court's decision in Warner v. Perrino. That case involved an action brought under Section 1982 and 3617 of Title 42 of the United States Code. Moreover, one court has recognized that "other circuits have generally refused to toll the limitation period for causes of action arising under federal civil rights statutes on the basis of administrative filings with state agencies. . . ." London v. Coopers & Lybrand, 644 F. 2d 811, 815 (9th Cir. 1981). See Stevens v. Tennessee Valley Authority, 517 F. Supp. 75, 76 (E.D. Tenn. 1981).

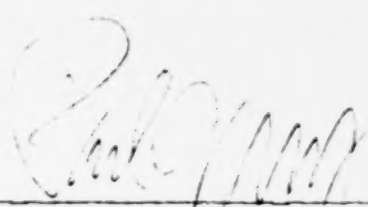
It can be seen from the foregoing that Ohio does provide a comprehensive housing discrimination statute. It was clearly the intent of the Ohio General Assembly to cover all areas of housing discrimination.

Therefore, under any theory this is the most analogous state statute of limitations. Consequently, in such an action as this the petitioner must

commence the action within 180 days. Clearly, the present action was not commenced within that 180 day period and was time-barred. Therefore, the District Court erred in not dismissing this action.

C O N C L U S I O N

This case presents no issue of national importance. Any so-called constitutional implications are presented solely to whet the appetite of the court. However, they are not present in this case. Therefore, the petition for writ of certiorari must be denied.



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ORIGINAL

RECEIVED

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SUPREME COURT, U.S.

CASE NO. 83-512

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

MILTON SUTTON, et al.,

Petitioners,

vs.

PHILIP R. BLOOM,

Respondent,


MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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Respondent, Philip R. Bloom, pursuant to Rule 46 of the Rules of Practice of the United States Supreme Court, moves this court for an order granting him leave to proceed in forma pauperis.

Respondent states that on January 21, 1980 the United States Court of Appeals for the Sixth Circuit granted the motion of the respondent to proceed in forma pauperis and therefore he proceeded on appeal in forma pauperis.

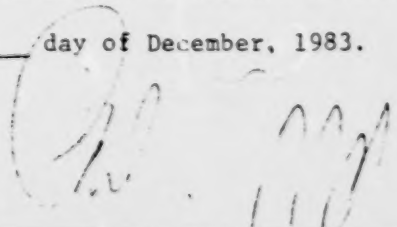
Respondent therefore requests that he be granted like leave before the United States Supreme Court to proceed in forma pauperis.



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S E R V I C E

A copy of the foregoing Motion was mailed to Kenneth A. Bravo,
Attorney for Petitioners, on this _____ day of December, 1983.



Attorney for Respondent

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SIXTH CIRCUIT

FROM

Northern District of Ohio, E.D.; at Cleveland

80-30585**TITLE OF CASE****ATTORNEYS FOR APPELLANT**

Sutton and Emma Sutton,

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p R. Bloom,

Defendant-Appellant.

ATTORNEYS FOR APPELLEE

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 Barbara Friedman

housing discrimination)

BELOW: C76-767
 BELOW: Thomas
 OF JUDGMENT: April 12, 1979
 OF APPEAL FILED: May 3, 1979

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
11/80	In Forma Pauperis			Certified record returned to D. Ct. 7/19/83 Receipt acknowledged 7/20/ P. Eberhardt

Best Copy Available

GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE

SIXTH CIRCUIT

NO. 80-3058 Transferred from 79-8365

DATE 79	FILINGS—PROCEEDINGS	Filed
7	Motion of appellant for leave to proceed on appeal in forma pauperis (m-5/3)	
18	Opposition of appellees to appellant's motion to proceed in forma pauperis (m-5/14)	
21	Reply of appellant to appellees' opposition to motion to proceed in forma pauperis (m-5/17)	
4	Certified record (3 vols. pleadings, 3 vols. deposition), received from district court	
15	Order denying motion of appellant for leave to proceed in forma pauperis, without prejudice to the refileing of the same if accompanied by a detailed affidavit of indigency (Peck, J.)	
29	Motion of appellant for extension of time for refileing motion for leave to proceed in forma pauperis (m-8/27) [Motion granted JPH 9/4] (30 days in which to comply with order of 8/15/79)	
12	Motion of appellant to proceed in forma pauperis (m-9/5)	
80		
21	Order granting motion of appellant to proceed in forma pauperis, it is further ordered that motion for a transcript is denied, without prejudice to appellant's renewal of the motion in District Court (Keith, J.)	
21	Certified copy of above order issued to District Court	
21	Certified record (3 vols. pleadings, 3 vols. depositions), filed; and cause docketed	
28	Appearance of P. Mancino, Jr. for appellant	
13	Certified Supplemental Record (1 vol. pleadings)	
27	MOTION: appellant's transcript of proceedings to 3/31/80 (m-2/25)	
8	Motion of plaintiff-appellees to stay appeal proceedings pending outcome of bankruptcy proceedings (m-5/6)	
23	Brief of appellant in opposition to motion to stay appeal (m-5/20)	
30	Motion of appellees Sutton for extension of time in which to respond to appellant's brief in opposition to motion to stay appeal (m-5/28) [ext. to 6/9/80 granted JPH 6/2]	
9	Reply of appellee to appellant's opposition to motion to stay (m-6/6)	
1	Order denying motion of appellees to stay appeal proceedings; it is further ordered that appellant file brief and joint appendix by 8/11/80 (Peck, J.)	
14	Motion: court reporter's transcript to 11/12/80 (m-8/1) [ext. to 11/12/80 for transcript granted, JPH, dp., 8/25/80]	
4	Motion of appellant for an enlargement of 40 days to file brief after transcript is filed [Motion Granted, JPH, 8/25/80, dp]	
	Motion: court reporter's transcript to 1/12/81 [Motion Granted 12/5 JPH/lg]	
3	Motion: court reporter's transcript to 3/13/81 700 pages done 1200 pages yet to do [Granted, JPH/sv]	